

EX PARTE OR LATE FILED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAR - 2 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Parts 2 and 15 of the) ET Docket No. 94-124
Commission's Rules To Permit Use of) RM 8308
Radio Frequencies Above 40 GHz for)
New Radio Applications)

MOTION TO ACCEPT LATE-FILED REPLY COMMENTS DOCKET FILE COPY ORIGINAL

Now comes Ameritech and respectfully moves the Federal Communications Commission ("the Commission") to accept these Reply Comments in the above-captioned matter, and to accord them full and complete consideration as part of the record therein despite their being filed one day late after the established filing date.

Due to the sudden onset of a life-threatening illness to a member of the immediate family of counsel for the movant, the preparation and filing of this pleading could not reasonably have been completed any sooner than this date. Since the Docket has thus far been the subject of comments by approximately thirty-nine parties, this pleading represents but a small portion of the total record before the Commission. Thus, a delay of a single day cannot be said to prejudice the rights of any party hereto to fully review and comprehend the record, particularly since no responsive pleading is anticipated in this matter.

For these reasons, the Commission is requested to accept these Reply Comments as if timely filed.

Respectfully submitted,



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Dated: March 2, 1995

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF TECHNOLOGY

In the Matter of)
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Amendment of Parts 2 and 15 of the) ET Docket No. 94-124
Commission's Rules To Permit Use of) RM 8308
Radio Frequencies Above 40 GHz for)
New Radio Applications)

REPLY COMMENTS OF AMERITECH

Ameritech submits these Reply Comments regarding its Notice of Proposed Rule Making¹ in this matter. Several parties have submitted Comments directed to issues not presented by the NPRM, seeking to resurrect them from the Commission's well-established record in its proceeding regarding Local Multipoint Distribution Services ("LMDS") and re-argue them here. Specifically, these parties argue for the Commission to reconsider its tentative conclusion to allocate the 28 GHz band for LMDS and hold it for later exclusive use by future satellite services through which these parties eventually hope to profit.² These attempts to subvert the Commission's established processes should be rejected out of hand.

The action advocated by these self-serving arguments was not even arguably present in the instant proceeding. The only mention of LMDS in the NPRM is related to the possibility of paralleling the Commission's proposed LMDS licensing structure

¹ In the Matter of Amendment of Parts 2 and 15 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHz for New Radio Applications, ET Docket No. 94-124, Notice of Proposed Rule Making, (released November 8, 1994) ("NPRM").

² See, e.g., Comments of Hughes Communications Galaxy, Inc. ("Hughes"), a satellite services operator which argues for the Commission to move LMDS "based on a survey of manufacturing companies" (at 8); Comments of TRW, arguing as "one of the nation's primary developers of electronics equipment and hardware for the millimeter wave bands (at 7); Comments of Harris, which "designs, develops, and manufactures (sic) microwave and multiplex systems used by licensees in the terrestrial fixed microwave service (at 1).

with respect to its block allocation structure,³ service areas,⁴ buildout requirements, use of auctions, license terms, and other licensing characteristics.⁵ Complete reassessment of the public interest considerations regarding use of the 28 GHz band is not even remotely raised in the NPRM.

The appropriate use of the 28 GHz band was squarely and fully debated over one year ago, on the record in the LMDS proceeding.⁶ Although the Commission has taken no action in the LMDS proceeding, the benefits and drawbacks of making an exclusive allocation of the band for use by future satellite services was discussed in depth therein. The Commission sought and received public comments on that very proposal, noting that "[t]he drawbacks of this option are that the proposed satellite services will not be available for some years, satellite uses do not reuse frequencies as effectively as do terrestrial uses, (and) terrestrial uses, which appear to be technically feasible now, either may never become available or may be considerably delayed . . .".⁷ In addition to being thus fully and fairly treated by the Commission, the issues involved were also the subject of the activities of a duly-convened Negotiated Rulemaking Committee which met during 1994.⁸

In both fact and effect, interested parties have already had "their day in court" on the questions surrounding the use of the 28 GHz band. The Commission has

³ NPRM, ¶ 23.

⁴ NPRM, ¶ 24.

⁵ NPRM, ¶ 25.

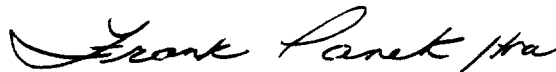
⁶ In the Matter of Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5 - 29.5 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service, CC Docket No. 92-297, Second Notice of Proposed Rulemaking, (released February 11, 1994).

⁷ Ibid., ¶¶ 44-5.

⁸ For a discussion of the Commission's substantial existing record regarding this activity, see, Commission of CellularVision, at 2 (fn 2).

raised the issues, received comment, and even held two months of face-to-face negotiation proceedings. The current last-ditch effort to reopen debate on these questions should be summarily rejected.

Respectfully submitted,

A handwritten signature in cursive script, reading "Frank Panek", followed by a horizontal line.

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Dated: March 2, 1995

CERTIFICATE OF SERVICE

I, Deborah L. Thrower do hereby certify that a copy of the foregoing Reply Comments of Ameritech has been served on the parties listed on the attached service list, by first class mail, postage prepaid, on this 2nd day of March 1995.

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